

II. Office of the State Public Defender -- Nicholas L. Chiarkas, State Public Defender

The State Public Defender requests approval to transfer \$950,600 GPR on a one-time basis from its trial representation annual appropriation under s. 20.550(1)(c) to the private bar and investigator reimbursement biennial appropriation under s. 20.550(1)(d) in fiscal year 1997 in order to offset a projected deficit in this appropriation.


Governor's Recommendation

Approve the request to transfer \$950,600 GPR from the trial representation annual appropriation under s.20.550.(1)(c) to the private bar and investigator reimbursement biennial appropriation under s.20.550(1)(d) in fiscal year 1996-97 in order to offset a projected deficit in this appropriation.

CORRESPONDENCE MEMORANDUM**STATE OF WISCONSIN
Department of Administration**

Date: December 10, 1996

To: Members, Joint Committee on Finance

From: Mark D. Bugher, Secretary
Department of Administration 

Subject: Section 13.10 Request from the Office of the State Public Defender to Transfer GPR Savings to the Private Bar Appropriation.

Request

The Office of the State Public Defender (SPD) requests approval to transfer \$950,600 GPR from its trial representation annual appropriation under s.20.550(1)(c) to the private bar and investigator reimbursement biennial appropriation under s.20.550(1)(d) in fiscal year 1996-97 in order to offset a projected deficit in this appropriation.

Background

The 1995-97 budget (1995 Wisconsin Act 27) included a number of measures to improve office efficiency and to reduce private bar costs. These measures included: limiting and/or eliminating SPD representation in certain types of cases; increasing attorney statutory caseloads; implementing a collections program; providing paralegals and regional office administrators to assist attorneys with non-attorney work; reducing in-court rates for private attorneys; implementing flat-rate contracting; and, verifying eligibility of clients. As a result of these changes, the private bar appropriation was reduced by \$18.4 million GPR for the 1995-97 biennium. In April 1996, the Governor also signed Senate Bill 562 (SPD Appropriations Bill) which provided an additional \$2,230,500 GPR in the private bar and investigator reimbursement biennial appropriation to restore the funding associated with two provisions in Act 27 that were vetoed by the Governor, thus making the SPD whole with respect to the provisions in Act 27.

Despite efforts to effectively manage its existing resources, the SPD continues to project a deficit in the private bar appropriation at the end of the current biennium of \$3,456,600. There are several factors contributing to the deficit. First, less revenue has been collected from clients than anticipated. The budget assumed SPD would collect \$7.5 million. The SPD currently projects that a total of \$1,858,500 will be collected during this biennium, a difference of approximately \$5.6 million. A second factor contributing to the deficit is the up front cost associated with flat-rate contracting. The SPD estimates a deficit of \$1.4 million at the end of the current biennium due to front end payment requirements (equal to the first two months of assigned cases) for fixed-fee contracts. It should be noted that these contracts are expected to generate an estimated \$2.6 million in savings in the next biennium for a net savings of \$1.1 million.

Finally, the SPD estimates that staff will reach only 99% of budgeted caseloads by the end of biennium, resulting in a deficit of \$1.5 million.

It should be noted that there are also factors which are reducing the current SPD deficit. Changes in jurisdiction have created \$336,100 more savings in the private appropriation than anticipated in the 1995-97 budget. Also, overall caseload growth has been lower than expected, for estimated savings of \$3.8 million.

Analysis

The SPD requests approval to transfer \$950,600 GPR in FY97 in savings generated from delaying the filling of vacant staff attorney positions. The decision to delay filling attorney positions was based, for the most part, on an actual decrease in the number of available cases. The overall decrease in caseloads appears to be a result of jurisdictional changes (i.e. eliminating SPD representation) and SPD implementation of more stringent indigency verification procedures.

The SPD estimates that it has delayed filling a total of 12.21 FTE attorney positions throughout the state based on the actual number of days that these positions have remained vacant. The estimated total salary savings generated from the vacant positions is \$733,900 GPR in FY97. In addition, the estimated total fringe benefits savings is \$163,000 GPR, based on a 22.2% fringe rate. The request also includes GPR savings of \$53,800 in FY97 generated from supplies and services associated with the above positions. The following table summarizes the request:

Trial Representation [s.20.550(1)(b)]

Salaries	\$733,800
Fringe Benefits	\$163,000
Supplies and Services	\$53,800

Total GPR Savings	\$950,600
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Historically, the costs associated with staff attorney, paralegal and regional administrative officer positions have been budgeted with a corresponding savings in the private bar appropriation. Therefore, DOA believes it is appropriate to transfer the GPR savings associated with these vacant positions to the private bar to offset costs in this biennial appropriation. Approval of this request will reduce the projected deficit to approximately \$3.0 million GPR.

Recommendation

Approve the request to transfer \$950,600 GPR from the trial representation annual appropriation under s.20.550.(1)(c) to the private bar and investigator reimbursement biennial appropriation under s.20.550(1)(d) in fiscal year 1996-97 in order to offset a projected deficit in this appropriation.

Prepared by: Lisa Kelly 266-8270
State Budget Office

November 15, 1996

The Hon. Brian Burke, Co-Chair
Joint Committee on Finance
Room 302
100 North Hamilton
Madison, Wisconsin 53709

The Hon. Ben Brancel, Co-Chair
Joint Committee on Finance
Room LL2
119 Martin Luther King, Jr. Blvd.
Madison, Wisconsin 53709

RE: December Meeting of the Joint Committee on Finance under s. 13.10

DEAR SENATOR BURKE and REPRESENTATIVE BRANCEL:

Brief Summary of Request

The Office of the State Public Defender (OSPD) requests the transfer of \$896,800 salary and fringe benefit dollars and the transfer of \$53,800 from the supplies-and-services line to the private bar appropriation to help offset its remaining projected \$3,456,600 deficit.

At the June s.13.10 meeting, the Joint Committee on Finance approved the transfer of \$860,500 of FY 96 funds to the private bar appropriation. As part of the \$3,456,600 deficit calculation, it was assumed that the agency would receive approval to transfer \$500,000 in FY 97. Consequently, the transfer of these funds (\$896,800 + \$53,800, less the \$500,000 that is already part of the deficit calculation) will reduce the deficit projection by \$450,600 to \$3,006,000.

Background of Request

The OSPD implemented many legislative changes this biennium: higher attorney caseloads, stricter eligibility verification, changes in OSPD jurisdiction, and the development and initiation of an attorney fees collection program. One of the results of these changes has been the reduction in the number of available cases. This reduction has made it important for the agency to closely evaluate each staff attorney vacancy to determine whether it was fiscally prudent to immediately fill a vacancy. Consequently, the agency has not filled attorney vacancies as quickly as in the past, thereby generating savings in the salary and fringe benefit lines. In addition, there has been a savings of supplies-and-services dollars as a result of these unfilled attorney positions. In order to offset the remaining projected deficit in the the private bar appropriation, the agency requests the transfer of the savings associated with the unfilled attorney positions to the private bar appropriation.

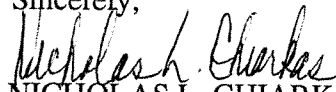
As of this writing, the agency has \$1.6 million in uncommitted funds in the private bar appropriation and \$1.1 million in collections revenue to use to pay private bar vouchers. At an average pay-out of approximately \$1.4 million per month, the agency will be out of funds in about two months. Therefore, it is necessary to address the transfer of funds at the December meeting.

The Request Meets Statutory Criteria

The Joint Committee on Finance has the authority to transfer funds between appropriations (s. 13.101(4)) if the transfer will result in more efficient and effective methods for performing programs or if legislative intent will be more effectively carried out as a result of the transfer. The agency believes that the transfer of funds to the private bar appropriation is the fiscally appropriate management of these funds for the agency as it seeks, in this and other well-documented ways, to eliminate its projected deficit.

I will represent the agency at the December meeting.

Sincerely,


NICHOLAS L. CHIARKAS
State Public Defender



**WISCONSIN
PUBLIC
DEFENDER**

Nicholas L. Chiarkas
STATE PUBLIC DEFENDER

Frederick H. Miller
DEPUTY STATE PUBLIC DEFENDER

Sally Mayne Pederson
LEGAL COUNSEL

Arlene F. Banoul
ADMINISTRATIVE DIRECTOR

Marla J. Stephens
APPELLATE DIRECTOR

Marcus T. Johnson
ASSIGNED COUNSEL DIRECTOR

Thomas E. Dixon
TRAINING DIRECTOR

Michael Tobin
TRIAL DIRECTOR

315 N. HENRY STREET
SECOND FLOOR
P.O. BOX 7923
MADISON, WI 53707-7923
(608) 266-0087
FAX: (608) 267-0584



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One East

• Fax: (608) 267-6873

16, 1996

TO: Members
Joint Committee on Finance

FROM: Bob Lang, Director

SUBJECT: Justice--Section 13.10 Request for Supplemental Funding for Legal Expenses--
Agenda Item III

The Department of Justice requests appropriation to offset an estimated supplemental appropriation.

However accurate the estimate,

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al expenses

BACKGROUND

Under current law, payment for legal in the prosecution or defense of any action may have an interest is provided through a supplement commonly referred to as the "case account," expense must be in, or actually necessary proceeding; (2) the expense incurred must be in the absence of the case or proceeding; and (3) the expense must not be provided for by another appropriation.

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Expenses charged to the case account include: (1) contracts with expert witnesses; (2) travel expenses of assistant attorneys general to prepare for and attend trials; (3) expenses for transcripts and court fees; (4) telecommunication costs; (5) the cost of computerized legal research services; (6) postage and freight costs; and (7) miscellaneous expenses such as building space, equipment and car rental charges.

In the 1981-83 biennial budget, the legal expenses appropriation was converted from a sum sufficient appropriation to a biennial, sum certain appropriation. In 1987, the appropriation was converted to an annual appropriation, but returned to biennial in 1989.

Since the conversion from a sum sufficient appropriation, requests for additional funding have been common. Between 1982-83 and December, 1992, the Department received seven funding supplements from the Joint Committee on Finance. This request is the first since 1992.

ANALYSIS

For the 1995-97 biennium, \$1,797,600 is appropriated for legal expenses, and an additional \$118,400 was carried over for expenses incurred in 1994-95, but paid in this biennium, for total funds available of \$1.9 million. Of that, \$1,186,600 was spent in 1995-96 (including the \$118,400). Therefore, the total amount available in the case account for 1996-97 is \$729,400. Expenditures through December 9, 1996, totalled \$520,600 and the Department estimates another \$827,800 (including \$199,900 in encumbered funds on December 9) for total expenditures of \$1,348,400. The table below indicates the projected case account deficit.

Biennial Appropriation	\$1,797,600
Carry Over from 1994-95	<u>118,400</u>
Total Available	\$1,916,000
1995-96 Expenditures	-1,186,600
1996-97 DOJ Projected Expenditures	<u>-1,348,400</u>
Total Expenditures	-\$2,535,000
Projected Deficit	-\$619,000

As of December 9, 1996, only \$8,900 was available in unencumbered funds for legal expenses for the remainder of this fiscal year. DOJ officials indicate that they will continue operating through the end of December by using funds which have already been committed under current contracts to pay operating expenses. In addition, the payment of some bills is being delayed until funds become available.

The Department indicates that the shortfall in funding is due to extraordinary expert witness costs in this biennium. The table below breaks down spending by category over the last few years:

<u>Category</u>	<u>1993-94</u>	<u>1994-95</u>	<u>1995-96</u>	<u>Estimated 1996-97</u>
Experts	\$90,900	\$270,700	\$514,100	\$660,000
Filing & Court Reporter Fees	251,200	210,500	253,500	297,500
Data Processing	106,000	121,600	104,800	110,700
Travel	97,800	96,700	110,900	109,300
Telecommunications	36,300	48,800	44,200	46,000
Postage & Freight	42,400	59,500	51,100	49,500
Miscellaneous	<u>108,200</u>	<u>146,800</u>	<u>107,900</u>	<u>75,400</u>
Total	\$732,800	\$954,600	\$1,186,500	\$1,348,400
Percent Spent on Experts	12%	28%	43%	49%

As shown above, expert expenses in this biennium are expected to be three times more than they were in the last biennium. Expert witnesses are used for court testimony and assistance in cases which often involve highly technical and significant issues such as Indian litigation, medical malpractice, abortion law, environmental issues, antitrust issues, sexual predator and other criminal issues, and general liability of state employees and officials.

Not all cases involve experts. Because of the high costs of expert witnesses, attorneys must seek approval from the Department before hiring them. The attorney assigned to the case makes the initial determination as to whether the case requires an expert and the potential cost of the expert. The request is reviewed by the unit director, and if approved, passed on to the administrator of the Legal Services Division. If approved by the Division, the attorney secures a contract for the expert witness. Despite the internal review process, DOJ indicates that more cases are requiring experts, often to counter experts hired by opposing counsel.

The actual cost of an expert witness depends on the duration of and the work involved in a particular case. While expert witness costs vary with each case, typically they range from \$6,000 to \$10,000. However, the Department has had several cases in this biennium far exceeding that average. For example, the Menominee Indian litigation, involving hunting and fishing rights for approximately one-third of northern and eastern Wisconsin, has incurred \$292,100 in expert witness costs so far this biennium. Two other cases have involved expert witness costs of over \$100,000: (1) Karling v. Foust, involving the 24-hour waiting period for abortions; and (2) NAACP v. Thompson, relating to the method in which judges are elected. Finally, a case involving the constitutional challenge of a portion of the 1995-97 budget bill, regarding the state's school aids formula has resulted in \$42,400 in expert witness costs so far this biennium.

DOJ officials estimate \$619,000 is needed for the remainder of the fiscal year (but have requested \$600,000). This estimate is based on average monthly expenditures of \$112,000, or

\$1,348,400 for the year. Using actual expenditures of \$513,600 through November 30, 1996, monthly expenditures currently average \$102,700, which, if annualized, would mean total expenditures of \$1,232,400 for the year (or \$97,00 less than requested by DOJ). However, DOJ officials indicate that certain expenditures have been delayed because of the lack of funds, and indicate that actual incurred costs are closer to \$112,000 per month.

When looking at expert costs, the total of outstanding payments for existing contracts that DOJ anticipates will come due this fiscal year is \$496,900. In addition, the Department estimates that \$120,400 will need to be paid this year for cases in which experts have been hired but no contract has been signed, and cases in which it is anticipated that experts will be needed. This would mean additional expert expenditures of \$617,300 this fiscal year. However, as of December 9, 1996, only \$208,800 (including encumbrances of \$199,900) remains for all legal expenses (over half of the case account expenses are budgeted for expenditures other than experts). Therefore, based on projected expert expenses alone, the \$600,000 that DOJ is requesting would appear reasonable.

While predictions of actual expenditure are difficult, it is clear that funds for DOJ legal expenses are virtually depleted. If supplemental funds are not received, DOJ will no longer be able to hire experts, travel to depositions, pay for transcripts or use automated legal research tools. According to DOJ officials, this would seriously curtail their ability to represent the state in legal matters which could end up costing the state in settlement moneys resulting from lost cases.

In the past, requests for additional funding for the case account have typically involved a reallocation of funds from other DOJ appropriations to offset at least a portion of the GPR cost. However, DOJ officials indicate that due to GPR reductions included under 1995 Act 27 (the biennial budget bill), they do not have surplus funds available to transfer funds without reducing operations.

Under Act 27, DOJ's legal services appropriation was reduced by \$756,300, and funds for supplies and property were reduced by \$405,800. The supplies and property reductions were distributed among five appropriations (legal services, law enforcement services, drug enforcement, administrative services and victim and witness operations). In October, 1995, DOJ received approval from the Committee to reallocate a portion of the legal services appropriation reduction to the Divisions of Criminal Investigation and Narcotics Enforcement. In addition, \$126,800 of the reduction was expected to be offset from program revenue received from legal services provided to the University of Wisconsin.

DOJ officials indicate that due to the budget reductions, they may face a deficit situation in other appropriations in addition to the case account. Based on current expenditures and operations, there is no apparent potential for a deficit in other appropriations. However, it would appear that it would be difficult for the Department to absorb additional reductions to fund their request.

The Finance Committee has \$474,300 in its unreserved balance. Therefore, reserved monies would have to be released to fully fund the projected deficit. Under 1995 Act 303, which transferred the duty and authority to provide child welfare services in Milwaukee County from the Milwaukee County Department of Social Services to the Department of Health and Family Services (DHFS), a total of \$4,051,400 was reserved in the Committee's appropriation for an automated child welfare information system and prosecution costs for termination of parental rights cases in Milwaukee County. To date, \$430,200 has been released for prosecution costs in termination of parental rights cases, leaving \$3,621,200 in reserve. Of that, DHFS is currently requesting release of \$1,987,400. This leaves over \$1.6 million in reserve, and DHFS officials indicate that they will not be requesting release of these funds. As a result, the Committee could reduce this reserve by \$125,700, and use the remaining unreserved balance of \$474,300 to fully fund DOJ's projected case account deficit.

Alternatively, in their request, DOJ suggested that they be authorized to use \$231,700 in program revenue from multi-state settlement funds to lower the GPR cost. Prior to 1995 Act 27, settlement proceeds from anti-trust and consumer protection cases were often used to offset the cost of legal services. While most of DOJ's consumer protection duties were transferred to the Department of Agriculture, Trade and Consumer Protection under Act 27, DOJ retained authority to enter into multi-state cases. Currently, funds received from any settlements of these cases after July 1, 1995, are deposited into a DOJ appropriation for restitution to victims and certain court-ordered Departmental costs. Any funds over and above the restitution and court-ordered amounts are deposited to the general fund. According to DOJ, \$291,200 has been returned to the general fund so far this biennium.

The funds that DOJ is requesting to use were received from multi-state settlements approved prior to July 1, 1995, and are the amounts left over after all obligations to victims and court-ordered payments have been made. However, since they were received prior to the effective date of Act 27, they were not deposited to the general fund but instead were temporarily placed in program revenue custody account pursuant to s. 20.907 of the statutes. The State Bureau of Financial Operations indicates that to formally receive these funds under s. 20.907 the approval of the Joint Committee on Finance is required. Further, the Committee could also direct that these funds then be used to meet a portion of the legal expense costs for which DOJ is requesting supplementation. The Department believes that it is appropriate for these funds to be used to offset the cost of legal expenses, as had been the practice prior to Act 27. The actual amount available is \$220,000.

If authority to formally credit the monies to DOJ and to also allow DOJ to use the \$220,000 PR for this purpose is granted by the Committee, the case account deficit could be reduced to \$380,000. The Committee could fund the remainder of the deficit from its unreserved balance or from the reducing the reserved balance for child welfare in Milwaukee County. Using the Committee's unreserved balance, \$106,000 in unreserved funds would remain in the Committee's appropriation.

Given the uncertainty of total expenditures, another alternative the Committee could consider is approving the use of the \$220,000 PR, which represents approximately two months' worth of expenditures. Alternatively, the Committee could provide the \$220,000 in DOJ settlement moneys lapse to the

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reducing the reserved balance for Milwaukee
of \$380,000 from the Committee's unreserved
\$220,000 in multi-state settlement funds to DOJ
and authorize the use of the \$220,000 PR for legal expenses.

3. Approve a reduced supplement of \$380,000 from the Committee's reserved balance for Milwaukee County child welfare services. In addition, approve the crediting of \$220,000 in multi-state settlement funds to DOJ and authorize the use of the \$220,000 PR for legal expenses.

4. Approve the crediting of \$220,000 in multi-state settlement funds to DOJ and authorize the use of the \$220,000 PR for legal expenses.

5. Provide a supplement of \$220,000 from the Committee's unreserved balance. Require the lapse of the \$220,000 balance from multi-state settlement funds to the general fund.

Prepared by: Carri Jakel

Alt. 4 plus
\$92,800 out of
JFC unreserved balance
be granted to the
Department.

MO# Alt. 4 +
\$92,800 (see note)

BURKE	Y	(N)	A
ANDREA	Y	N	(A)
GEORGE	Y	N	(A)
DECKER	Y	(N)	A
JAUCH	Y	(N)	A
WINEKE	Y	(N)	A
WEEDEN	(Y)	N	A
COWLES	(Y)	N	A
BRANCEL	(Y)	N	A
FOTI	(Y)	N	A
SCHNEIDERS	(Y)	N	A
OURADA	(Y)	N	A
HARSDORF	(Y)	N	A
PORTER	(Y)	N	A
LINTON	Y	N	(A)
COGGS	Y	(N)	A

AYE 8 NO 5 ABS 3

MO# Alt. 3

2 BURKE	(Y)	N	A
ANDREA	Y	N	(A)
GEORGE	Y	N	(A)
1 DECKER	(Y)	N	A
JAUCH	(Y)	N	A
WINEKE	(Y)	N	A
WEEDEN	Y	(N)	A
COWLES	Y	(N)	A
BRANCEL	Y	(N)	A
FOTI	Y	(N)	A
SCHNEIDERS	Y	(N)	A
OURADA	Y	(N)	A
HARSDORF	Y	(N)	A
PORTER	Y	(N)	A
LINTON	Y	N	(A)
COGGS	(Y)	N	A

AYE 5 NO 8 ABS 3



Legislative Fiscal Bureau

One East Main, Suite 301 • Madison, WI 53703 • (608) 266-3847 • Fax: (608) 267-6873

December 16, 1996

TO: Members
Joint Committee on Finance

FROM: Bob Lang, Director

SUBJECT: Justice--Section 13.10 Request for Supplemental Funding for Legal Expenses--
Agenda Item III

The Department of Justice requests a supplement of \$600,000 GPR from the Committee's appropriation to offset an estimated shortfall of \$619,000 in the Department's legal expenses appropriation.

BACKGROUND

Under current law, payment for legal expenses incurred by the Department of Justice (DOJ) in the prosecution or defense of any action or proceeding in which the state may be a party or may have an interest is provided through a sum certain biennial appropriation. The appropriation, commonly referred to as the "case account," is controlled by three statutory requirements: (1) the expense must be in, or actually necessary to, the prosecution or defense of a state case or proceeding; (2) the expense incurred must be such that it would not have been incurred in the absence of the case or proceeding; and (3) the expense must not be provided for by another appropriation.

Expenses charged to the case account include: (1) contracts with expert witnesses; (2) travel expenses of assistant attorneys general to prepare for and attend trials; (3) expenses for transcripts and court fees; (4) telecommunication costs; (5) the cost of computerized legal research services; (6) postage and freight costs; and (7) miscellaneous expenses such as building space, equipment and car rental charges.

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ANALYSIS

For the 1995-97 biennium, \$1,797,600 is appropriated for legal expenses, and an additional \$118,400 was carried over for expenses incurred in 1994-95, but paid in this biennium, for total funds available of \$1.9 million. Of that, \$1,186,600 was spent in 1995-96 (including the \$118,400). Therefore, the total amount available in the case account for 1996-97 is \$729,400. Expenditures through December 9, 1996, totalled \$520,600 and the Department estimates another \$827,800 (including \$199,900 in encumbered funds on December 9) for total expenditures of \$1,348,400. The table below indicates the projected case account deficit.

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Total Expenditures	-\$2,535,000
Projected Deficit	-\$619,000

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While predictions of actual expenditure are difficult, it is clear that funds for DOJ legal expenses are virtually depleted. If supplemental funds are not received, DOJ will no longer be able to hire experts, travel to depositions, pay for transcripts or use automated legal research tools. According to DOJ officials, this would seriously curtail their ability to represent the state in legal matters which could end up costing the state in settlement moneys resulting from lost cases.

In the past, requests for additional funding for the case account have typically involved a reallocation of funds from other DOJ appropriations to offset at least a portion of the GPR cost. However, DOJ officials indicate that due to GPR reductions included under 1995 Act 27 (the biennial budget bill), they do not have surplus funds available to transfer funds without reducing operations.

Under Act 27, DOJ's legal services appropriation was reduced by \$756,300, and funds for supplies and property were reduced by \$405,800. The supplies and property reductions were distributed among five appropriations (legal services, law enforcement services, drug enforcement, administrative services and victim and witness operations). In October, 1995, DOJ received approval from the Committee to reallocate a portion of the legal services appropriation reduction to the Divisions of Criminal Investigation and Narcotics Enforcement. In addition, \$126,800 of the reduction was expected to be offset from program revenue received from legal services provided to the University of Wisconsin.

DOJ officials indicate that due to the budget reductions, they may face a deficit situation in other appropriations in addition to the case account. Based on current expenditures and operations, there is no apparent potential for a deficit in other appropriations. However, it would appear that it would be difficult for the Department to absorb additional reductions to fund their request.

III. Department of Justice -- Andrew Cohn, Executive Assistant

The department requests a supplement of \$600,000 GPR in FY97 from the Joint Committee on Finance appropriation under s. 20.865(4)(a) to the legal expenses appropriation under s. 20.455(1)(d) to provide additional funding for the department's expenses in the prosecution and defense of actions or proceedings in which the state is a party or may have an interest.

Governor's Recommendation

Approve a reduced supplement of \$125,000 GPR for FY97 and require the department to submit a plan to the Joint Committee on Finance for its March, 1997 s. 13.10 meeting identifying possible internal reallocations, case account encumbrances which could be delayed until FY98, and other alternatives for solving the remaining projected deficit.

CORRESPONDENCE MEMORANDUM

STATE OF WISCONSIN
Department of Administration

Date: December 10, 1996

To: Members, Joint Committee on Finance

From: Mark D. Bugher, Secretary
Department of Administration *MB*

Subject: Section 13.10 Request from the Department of Justice for Legal Expenses.

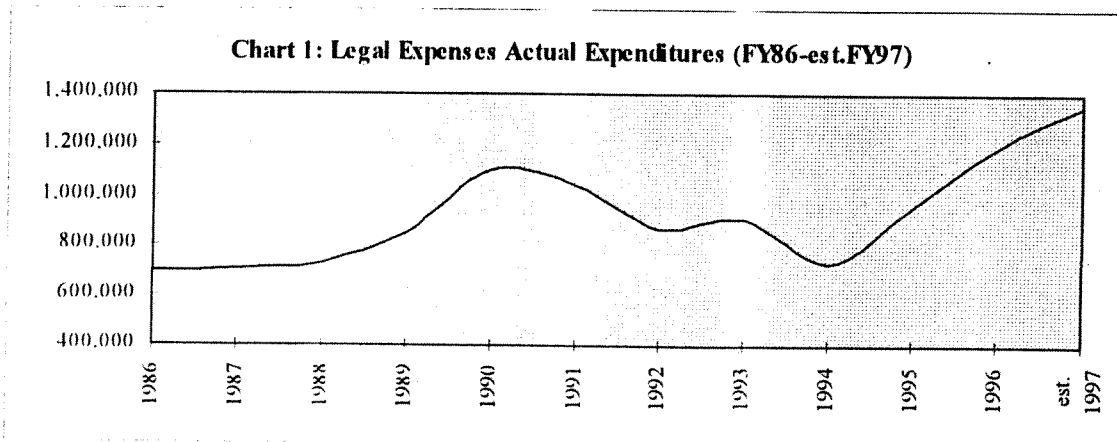
Request

The Department of Justice requests a supplement of \$600,000 GPR in FY97 from the Joint Committee on Finance appropriation under s. 20.865(4)(a) to the legal expenses appropriation under s. 20.455(1)(d) to provide additional funding for the Department's expenses in the prosecution and defense of actions or proceedings in which the state is a party or may have an interest.

Background

The legal expenses appropriation, also known as the "case account," is a biennial GPR appropriation which funds expenses associated with representing the state in lawsuits. Case-related costs such as consultant fees, expert witness fees, travel for trials, transcripts and filing fees are paid from this appropriation.

Expenditures from the legal expenses appropriation have varied considerably in the past ten years. As Chart 1 indicates, from approximately \$700,000 in FY86, expenditures peaked in FY90 at approximately \$1.1 million. Between FY90 and FY94, expenditures decreased significantly, then began rising again. The department estimates legal expenses total expenditures will reach a 10-year high of \$1,348,400 in FY97.



Prior to the 1981-83 biennial budget, DOJ's legal expenses appropriation was GPR sum sufficient. The 1981-83 budget changed it to a sum certain, biennial appropriation. Between the time of that conversion and December 1992, DOJ made regular s. 13.10 requests for supplements to the legal expenses appropriation. Table 1 illustrates the GPR supplements provided and internal transfers authorized regarding this appropriation.

Table 1: Supplements and Transfers to the Legal Expenses Appropriation

<u>Biennium</u>	<u>Supplements</u>	<u>Transfers</u>	<u>Total</u>
1981-83	\$140,000	\$ 0	\$140,000
1983-85	150,900	37,500	188,400
1985-87	189,000	0	189,000
1987-89	220,200	0	220,200
1989-91	0	561,500	561,500
1991-93	226,000	93,100	319,100

During the 1993-95 budget negotiations, \$122,800 GPR was added to the case account base, increasing the annual expenditure authority from \$767,600 to \$890,400. The budget also transferred \$110,200 GPR annually for LTE expenses to the legal services general operations appropriation. These two measures provided added resources and flexibility for the legal expenses appropriation. This request is the first for a supplement to the case account since passage of the 1993-95 budget (1993 Wisconsin Act 16).

The department is projecting FY97 case account expenditures of \$1,348,400, bringing total 1995-97 expenditures to \$2,535,000. As Table 2 illustrates, based on these projections, the legal expenses appropriation would incur a projected deficit of \$538,400.

Table 2: Current Status of 1995-97 Legal Expenses Appropriation (Biennial)

Budget Authority*	\$1,996,600
FY96 Actual Expenditures	1,186,600
FY97 Projected Expenditures	1,348,400
Total Actual + Projected Expenditures	(2,535,000)
Projected Deficit	(538,400)

*Includes \$1,797,600 Chp. 20 authority plus an encumbrance of \$199,000 carried from the 1993-95 biennium

Analysis

Accurately budgeting for the legal expenses appropriation is difficult because the department cannot predict the number, type and complexity of cases in which it may become involved. During the 1995-97 biennium, the use of expert witnesses in four cases has resulted in significantly greater expenditures than could have been anticipated. The four cases, and amounts spent thus far on experts, are: 1) Menominee Tribe of Indians v. State of Wisconsin, et al, regarding treaty rights (\$292,100); 2) NAACP v. Thompson, regarding voting rights (\$100,400); 3) Karlin v. Foust, regarding the recently enacted 24-hour waiting period for abortions (\$124,800); and 4) Vincent v. Voight, challenging the 1995-97 budget item appropriating GPR through the school aids formula for property tax relief (\$42,400).

A significant event leading to this request occurred earlier this year. On February 29, 1996, an allotment transferring \$250,000 of expenditure authority from FY97 to FY96 was approved to cover consultant and expert witness fees associated with the Menominee case. Defending the state in this case has required the department to contract with experts in the areas of linguistics, cultural anthropology, ethno-history and archeology. To that point in FY96, the Menominee case alone consumed more than 44% of the entire FY96 case account budget. The recommendation to approve the transfer acknowledges the possibility of a shortfall in FY97 and a potential s. 13.10 supplement request. The result of that action left \$729,400 in legal expenses budget authority for FY97.

Of the \$729,400 in case account funds available to be spent in FY97, \$503,700 (69%) has been spent and \$222,700 (30.5%) is encumbered to pay for services which in most cases have already been provided. Approximately \$3,100 (0.5%) remains uncommitted.

The measures enacted in the 1993-95 budget provided increased resources and flexibility to DOJ regarding the case account. In nearly four years the appropriation has contained sufficient funds to reimburse expert witnesses and provide all other necessary services.

Absent the significant expenditures related to the Menominee case, the department would likely be able to address its 1995-97 needs within existing base resources. It is clear that costs associated with the Menominee case represent extraordinary burdens on the legal expenses appropriation and that a supplement is necessary for the department to continue litigating current open cases.

The Menominee case was dismissed September 16, 1996 by federal district Judge Crabb, and the tribe's motion for reconsideration was denied November 15, 1996. The department anticipates needing another \$25,000 from the case account in costs associated with the tribe's appeal to the U.S. Seventh Circuit Court of Appeals. In addition, the department has identified approximately \$100,000 in obligations it owes to experts which have already provided services to the state.

addition, the department has identified approximately \$100,000 in obligations it owes to experts which have already provided services to the state.

The Joint Committee on Finance appropriation's remaining unreserved balance is \$474,300 for the 1995-97 biennium. Given the lack of funds to provide the department's entire request and emergency needs other agencies may have, it is reasonable to provide the Department resources to fulfill existing obligations and turn its focus to internal reallocations or other solutions which can be brought forward in the upcoming months.

Recommendation

Approve a reduced supplement of \$125,000 GPR for FY97 and require the department to submit a plan to the Joint Committee on Finance for its March, 1997 s. 13.10 meeting identifying possible internal reallocations, case account encumbrances which could be delayed until FY98, and other alternatives for solving the remaining projected deficit.

Prepared by: Scott Aker
267-0370



STATE OF WISCONSIN
DEPARTMENT OF JUSTICE

JAMES E. DOYLE
ATTORNEY GENERAL

Burneatta L. Bridge
Deputy Attorney General

123 West Washington Avenue
P.O. Box 7857
Madison, WI 53707-7857

James E. Doyle
Attorney General
608/266-1220

November 18, 1996

Senator Brian Burke, Co-Chair
Representative Ben Brancel, Co-Chair
Joint Committee on Finance
Room 113 South, State Capitol
Madison, Wisconsin 53702

Dear Senator Burke and Representative Brancel:

Under sec. 13.10, stats., the Department of Justice requests a supplement of \$600,000 in FY '97, from the appropriation under sec. 20.865(4)(a), to the "Legal Expenses" appropriation under sec. 20.455(1)(d). Case-related costs, incurred in representing the state's legal interests, have already used up virtually the entire amount authorized in this biennial appropriation, with more than six months remaining. Unless a supplement is provided, we will have to cancel contracts for expert witnesses, and curtail our representation of the state's legal interests.

This request meets the three criteria under sec. 13.101(3)(a), stats. First, an emergency exists, given that the Department lacks the funding needed to pay case-related costs of defending or prosecuting cases. Second, the Legal Expenses appropriation is fully committed at this time, and there are no other funds available to the Department to cover case-related costs. Third, the purposes for which a supplement is requested have been authorized by the Legislature.

Background

The Legal Expenses, or "Case Account," appropriation under sec. 20.455(1)(d) pays for costs incurred in prosecuting or defending actions where the state has an interest. Costs of experts, court reporters, transcripts, copying, court costs, witness fees, and attorney travel are charged to this appropriation. Table 1 shows Case Account spending in several broad categories since fiscal year '94, including an **estimate** of spending likely to occur in '97.

Table 1
Case Account Spending
FY '94 to FY '97

<u>Category</u>	<u>FY '94</u>	<u>FY '95</u>	<u>FY '96</u>	<u>FY '97</u>
Experts	\$90,927	\$270,658	\$514,122	\$660,000
Filing & Court				
Reporter Fees	251,180	210,526	253,538	297,500
Data Processing*	106,019	121,556	104,767	110,700
Travel	97,797	96,686	110,943	109,300
Telecommunications	36,320	48,811	44,237	46,000
Postage & Freight	42,442	59,475	51,134	49,500
Misc. Supplies and				
Services	<u>108,241</u>	<u>146,843</u>	<u>107,871</u>	<u>75,400</u>
TOTAL	\$732,926	\$954,555	\$1,186,612	\$1,348,400
Monthly Average	\$61,077	\$79,546	\$98,884	\$112,366

* "Data Processing" includes legal research services.

Because of the cost involved, it is important to understand the process we follow when reviewing the use of expert witnesses. Several internal approvals are needed before a contract can be executed for expert services. Attorneys assigned to each case make the initial determination as to whether an expert witness is warranted, which expert might be best suited for the case, and the costs which might be incurred. The attorney submits this information to the supervising Unit Director for review and approval. If approved at this level, the request goes to the Administrator of the Legal Services Division. If approved by the Administrator, the attorney secures a contract with the expert, establishing the terms under which services are to be provided. The Department's Fiscal Services Section processes payments to the expert, when requested by the attorney and the Division's Administrative Officer, as the terms of the contract are met.

Prior to FY '82, Case Account was a sum-sufficient appropriation. As such, case-related costs were recognized as essentially uncontrollable and unpredictable, and yet unavoidable in meeting the legal interests of the state. Case Account has required an increase in virtually every biennium, since being converted to a sum-certain appropriation.

Analysis

As we have seen over the years, the Department has very little ability to control or even predict case-related costs likely to occur in any given year, for at least three reasons. First, we have essentially no discretion regarding whether or not to defend cases, and only limited discretion involving prosecutions. Second,

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no one can predict the number, complexity or costs of cases to be seen in the future, although the budget process requires that we try to do so. Third, expenses vary dramatically for different cases, depending on the need for experts, the volume of transcripts and other documents, and other factors.

Many of our cases require the use of experts. Given the issues at stake, the expenses are clearly justified. Currently-active cases threaten control over state resources, expose the state to liability-related losses, or reflect policy initiatives of importance to the Governor or Legislature. The outcomes of these types of cases often hinge on the testimony of expert witnesses. Experts retained by our opponents in these cases must be countered by experts supporting the state's position.

Unless a supplement is provided, the Legal Expenses appropriation will be exhausted as early as December 31, 1996. We will continue operating through December 31, 1996 only by reducing existing purchase orders for expert contracts in which we do not expect to receive invoices for a few months. This will free up funds to pay invoices already received and payable. However, this short-term approach will only buy a little time. In addition, there are 14 contracts currently in the review and approval process.

As shown in Table 1 above, we expect to spend about \$1.3 million in '97 from the Case Account. Expenditures through November 18, 1996, exceeded \$492,000--a monthly average of more than \$110,000. At this rate, we can expect to spend \$1,320,000 this year. This prediction is also supported by data from our Internal Operating Budget system, which closely tracks expenditures at a very detailed level.

Why are we in this situation? Because we have had to spend an unprecedented amount for experts during this biennium. Table 2 helps to illustrate this problem.

Table 2
Expert Services and Total Spending
FY '94 through FY '97

	<u>FY '94</u>	<u>FY '95</u>	<u>FY '96</u>	<u>FY '97</u>
Total Budget	\$934,934	\$1,110,856	\$1,267,229	\$729,418
Total Spent	\$732,926	\$954,555	\$1,186,612	\$1,348,400
Spent on Experts	\$90,927	\$270,658	\$514,122	\$660,000
Experts as % of Total Spending	12.4%	28.3%	43.3%	48.9%

Table 2 assumes that the '97 budget will be supplemented to cover our projected spending level of \$1,348,400. Under our budget

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and expenditure assumptions, nearly half of '97 Case Account spending would be for experts, and would approach \$1.2 million for the current biennium.

Experts are requiring a growing share of the Legal Expenses appropriation. We contracted with 33 experts in '96, and have already issued purchase orders for 45 contracts in the first four months of '97. We have approved 17 other contracts totalling \$110,000, but cannot issue purchase orders because there are no uncommitted funds available to do so. The number of contracts, and related costs, is increasing.

The amount appropriated for the current biennium is \$1,916,029--\$898,800 newly appropriated for each year, plus \$118,429 carried over for obligations incurred in '95. More than \$802,000 has already been paid to experts in this biennium. We expect to spend an additional \$170,500 for purchase orders which are already in effect. An additional \$350,000 should be reserved for 17 contracts for which we do not have the funds to issue purchase orders, plus 14 requests for contracts which are moving through the approval process.

Menominee Indian litigation alone has already cost \$500,000 for experts during this biennium. Because of the impact of this case, it is worth summarizing its recent history and current status.

- On September 16, 1996, federal district Judge Crabb dismissed the Menominee Indians' suit seeking hunting and fishing rights over approximately one-third of northern and eastern Wisconsin, including all inland waters as well as the waters of Lake Michigan and the bay of Green Bay. Judge Crabb reasoned that the treaty language clearly showed that the tribe had reserved no permanent hunting and fishing rights, and that their temporary reserved rights had expired.
- On September 27, 1996, the Menominee tribe moved for reconsideration, submitting extensive documentary evidence intended to support its claim to permanent treaty rights.
- On October 27, 1996, the Menominee tribe appealed Judge Crabb's September 16 decision to the U.S. Court of Appeals for the Seventh Circuit in Chicago. The tribe asked that the appeal be held in abeyance until the trial court rules on the motion for reconsideration.
- On November 15, 1996, Judge Crabb denied the Menominee tribe's motion for reconsideration. This means that the original suit will not go to trial, and the costs of such a trial will be avoided. However, we expect to incur an additional \$25,000 or

so in costs associated with the Menominee tribe's appeal to the Seventh Circuit.

Given the claims on state resources and sovereignty which plaintiffs brought in this case, our investment in experts to help provide the most effective possible defense directly contributed to the favorable outcomes seen so far.

During this biennium, we have already spent more than \$750,000 for experts in just four cases. In addition to the Menominee litigation described above, the other three cases (and amounts spent so far for experts) are: (1) Karlin v. Foust, involving the recently-enacted 24-hour waiting period for abortions (\$124,776); (2) NAACP v. Thompson, relating to voting rights (\$100,379); and (3) Vincent v. Voight, involving a constitutional challenge to the portion of the Governor's 1995-97 budget bill which appropriated General Purpose Revenues through the school aids formula, for property tax relief (\$42,374).

Other significant issues are reflected in the 78 different purchase orders issued for experts so far during this biennium. At stake are cases involving medical malpractice, environmental pollution, antitrust, general liability of state employees and officials, and criminal and sexual predator issues.

Our analysis shows that we could spend \$2,535,000 from the Legal Expenses appropriation during this biennium, as shown in Table 1. However, only \$1,916,029 is appropriated. The difference is \$618,971, and we are requesting a supplement of \$600,000. Unless this supplement is approved, we face a six-month period during which all cases otherwise requiring expert witnesses, transcripts, fees, travel, or other case-related expenses will be put on hold. Such a hiatus would clearly jeopardize the state's legal interests. If our ability to defend or prosecute cases is hampered in this way, then the possible consequences could well include adverse decisions, increased liability and risk management payouts, and criminals being released on appeal.

In the past, we were allowed to use proceeds from multi-state consumer protection or anti-trust settlements, to cover some costs otherwise charged to the Case Account. Despite the fact that many of our consumer protection resources were taken from us in the 1995-97 budget process, we continue to participate in multi-state cases. So far during this biennium, we have returned to the General Fund \$291,193 from multi-state settlements, as GPR-earned. An additional \$231,684 has not been processed as GPR-earned, because it relates to multi-state settlements approved prior to July 1, 1995. If we were to receive authority to spend this amount, then costs otherwise charged to the Case Account could be charged, instead, to a settlement-related appropriation. In this

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way, our need for a GPR supplement could be reduced by nearly 40 percent.

We have no other appropriations which could be reduced, to help offset the increase needed for Case Account. In ten separate Decision Items, 1995 Wisconsin Act 27 reduced our '97 GPR appropriations by more than \$1.3 million. (This figure does **not** include funding cuts under decisions affecting consumer protection, public intervenor, or policy analysis.) Consequently, GPR appropriations across the Department, and not just Case Account, may come up short in '97. If the Case Account problem is to be addressed, then a supplement is needed, because there is nowhere else to turn.

Summary

As attorney for the state, our job, and our ethical responsibility, is to provide the most effective possible legal representation. We are called on both to defend and to prosecute a variety of very complex cases. Some we must defend, so that the state's resources are not diminished. Other cases reflect controversial policy issues of importance to the Governor and the Legislature. In any event, effective representation often includes the use of experts. Having made a sound professional judgment that special expertise is needed in particular cases, we would be highly remiss if we did not retain the experts necessary to serve our client's cause.

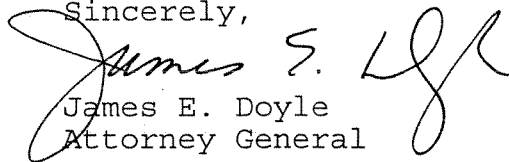
The Case Account budget is always difficult to manage. We were able to keep expenses well below budget during the last biennium, but extraordinary expenses will prevent that from occurring in this biennium. The cases requiring our attention will have consumed the Case Account budget by December 31, 1996, with more than six months remaining. Nearly two-thirds of the \$1.9 million appropriated for the current biennium has already been spent for experts, or is needed for purchase orders which we cannot afford to process due to a lack of funds. One-fourth of the entire Case Account budget has been spent for experts in just the Menominee Indian case alone.

Attending to the state's legal interests costs money. We need to pay for experts, court reporters, transcripts, copying, court costs and fees, and attorney travel. The only way to avoid these costs is to avoid taking cases altogether. Doing so would be unacceptable. Allowing an inadequate budget to dictate, or even influence, our approach to defending and prosecuting cases would be extremely short-sighted. It is safe to say that the state would incur costs many times greater than the \$600,000 supplement being

November 18, 1996
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requested for the Legal Expenses appropriation, if we are unable to provide the best possible legal representation.

Sincerely,

James E. Doyle
Attorney General



Legislative Fiscal Bureau

One East Main, Suite 301 • Madison, WI 53703 • (608) 266-3847 • Fax: (608) 267-6873

December 16, 1996

TO: Members
Joint Committee on Finance

FROM: Bob Lang, Director

SUBJECT: Natural Resources--Request for Waste Tire Program Expenditure Authority--Agenda Item IV

DESCRIPTION OF THE REQUEST

On August 5, 1996, the Department of Natural Resources (DNR) submitted a s. 16.515 request to the Department of Administration (DOA) for increased expenditure authority of \$2,635,700 PR in 1996-97 for the waste tire removal and reimbursement program activities appropriation. DNR requested \$1,135,700 to fully fund waste tire reimbursement grants for calendar year 1995 and \$1,500,000 to fund re-estimated 1996-97 program demand.

On September 27, 1996, DOA recommended that the Joint Committee on Finance approve \$2,428,000 PR in 1996-97 for the program. DOA decreased the requested amount after recalculating the 1995-96 program demand. Of the DOA request, \$928,000 would fund the amount by which DOA estimated 1995-96 program demand exceeded the appropriation and the other \$1,500,000 would fund re-estimated 1996-97 program demand.

On October 17, 1996, the Committee notified DOA and DNR that an objection had been raised and that a meeting would be scheduled to consider the request.

BACKGROUND

The waste tire removal and recycling program was designed to: (a) clean up stockpiles of waste tires that are a threat to public health; (b) promote markets for environmentally sound disposal or recovery of waste tires; and (c) address the on-going problem of illegal tire dumping. The program is funded from a \$2 per tire recovery fee that is assessed on the owner of a motor

vehicle being registered for the first time in Wisconsin (typically \$10 per vehicle including the spare tire). The fee generates approximately \$3.4 million annually. The program is administered with 5.5 positions. The fee and associated tire program will terminate on June 30, 1997.

The program has three components: (a) cleanup activities; (b) reimbursement grants; and (c) management or recovery grants. These include:

Cleanup Activities. Since the program's establishment in 1987-88, most of the funds have been used to cleanup approximately two million stockpiled tires annually. DNR funds priority cleanup activities on a continuous basis.

Reimbursement grants. Reimbursement grants, based on the amount by weight of tires reused by businesses (generally one cent per pound, or \$20 per ton), are provided to end users of waste tires used for energy recovery, road base, recycling to make new products or certain other uses. Administrative rule changes made in 1995 expanded eligibility to include waste tire processors, such as shredders, and eligibility was provided retroactively to include waste tires processed after January 1, 1992. The 1995 rule changes end reimbursement grants for end users and processors on January 1, 1997. Reimbursement grants are awarded every spring for tires used or processed during the previous calendar year.

Management or recovery grants. Management or recovery grants are provided for: (a) local government programs that reduce illegal dumping such as collection, education and enforcement; and (b) projects that expand the markets for waste tires such as research and development to create or improve technology to reuse waste tires. Management or recovery grant applications are due March 1 and grant activities must be completed within one year.

Effective June 30, 1997, 1995 Act 27: (a) terminates the waste tire recovery fee; (b) eliminates the waste tire program and 5.5 associated positions; and (c) lapses any remaining program balance to the general fund. The lapse was most recently estimated (in January, 1996) to generate \$3.3 million in revenue to the general fund. Act 27 also: (a) converted the program from a continuing to an annual appropriation; (b) re-estimated the waste tire appropriation in accordance with DNR estimates to be \$3,750,000 in 1995-96 and \$1,750,000 in 1996-97; and (c) transferred \$1,250,000 from the waste tire account balance to the segregated environmental fund.

After the program ends on June 30, 1997, high priority cleanups that are not completed by responsible parties could be eligible for funding from the segregated environmental fund. No funding will be available for reimbursement or recovery grants.

DNR's October 4, 1996, 1997-99 biennial budget request to the Governor (approved by the Natural Resources Board on September 25, 1996) included continued funding for waste tire reimbursement grants of \$1,500,000 in 1997-98 and \$1,000,000 in 1998-99, with funding from the environmental fund instead of program revenue from the current waste tire fee. On November 8, 1996, the Natural Resources Board voted to delete the tire reimbursement grant funding request and to reduce DNR's proposal for creation of an environmental fee on the sale

of new vehicles from \$10 to \$5 per vehicle. Subsequently, DNR submitted a 1997-99 biennial budget revenue proposal to the Governor that included the \$5 per tire environmental fee to be deposited in the environmental fund, but did not retract the request for continued waste tire reimbursement grants.

ANALYSIS

Program Demand

Prior to enactment of Act 27, the waste tire program activities appropriation was continuing and program expenditures met all eligible demand for the three program components. The Act 27 conversion of the appropriation from continuing to annual was intended to limit expenditures to estimated program demand.

In April, 1995, DNR estimated that 1995-96 demand would be \$3,750,000, including: (a) \$500,000 for cleanup activities; (b) \$3,000,000 for reimbursement grants (approximately \$1,500,000 for grants to end users and processors for tires used in calendar year 1995 and \$1,500,000 for retroactive reimbursements to waste tire processors for calendar years 1992 through 1994); and (c) \$250,000 for management or recovery grants. In 1995-96, DNR expended \$3,209,500 for the three program components and encumbered an additional \$727,000 that was carried forward into 1996-97 for possible expenditure. Table 1 shows the 1995-96 expenditures and encumbrances by program component. Almost 90% of the carry-forward encumbrances were for recovery grants made in March, 1996, to local governments for tire collection activities that may take place by March, 1997.

TABLE 1

1995-96 Waste Tire Expenditures by Program Component

<u>Component</u>	<u>Expenditures*</u>	<u>Encumbrances</u>	<u>Total</u>
Cleanup Activities	\$531,923	\$86,316	\$618,240
Reimbursement Grants	2,539,002	0	2,539,002
Recovery Grants	<u>138,522</u>	<u>640,676</u>	<u>779,197</u>
Total	\$3,209,447	\$726,992	\$3,936,439

*Includes expenditure of prior year encumbrances.

Administrative rules (NR 555) establish an expenditure plan that allocates \$2,100,000 annually for cleanups, \$750,000 annually for reimbursement grants and \$250,000 for management or recovery grants. The rules establish a prioritization plan if annual revenues are less than

\$3,100,000, requiring DNR to allocate funds first to cleanups, then to reimbursement grants, then to management or recovery grants. The rules specify that a prorated payment shall be deemed full payment of the reimbursement grant. In 1995-96, after the appropriation was converted to annual, the rule's expenditure plan and allocation plan were not changed to conform with the reestimated program demand and annual appropriation amount.

In 1995-96, DNR allocated funds to cleanups on a continuous basis and paid \$1.6 million in retroactive reimbursement grants for processors in the fall of 1995. Then, despite the administrative rule requirements for prioritization of funding, DNR encumbered all recovery grants in March, 1996, before calculating the demand for calendar year 1995 reimbursement grants. Finally, in June, 1996, DNR awarded calendar year 1995 reimbursement grants for end users and processors at 41% of the eligible amount. While the program would have had sufficient funds under the prior continuing appropriation to fund 1995 reimbursement grants at 100% of the eligible amount, proration of the grants was necessitated by conversion of the appropriation to annual, higher than estimated demand and awarding of recovery grants before awarding of reimbursement grants. Table 2 shows 1995-96 reimbursement grant amounts. (Actual expenditures in Table 1 include expenditures of prior year encumbrances and so are larger than Table 2 award amounts). The attachment shows who received prorated reimbursement grants in 1995-96. DNR requests \$1,135,700 to pay the remaining eligible calendar year 1995 reimbursement grant amounts.

TABLE 2

1995-96 Waste Tire Reimbursement Grants

	<u>Eligible Grant Amount</u>	<u>Award</u>	<u>Remaining Eligible Amount</u>
Retroactive reimbursements for processors for calendar years 1992 through 1994	\$1,619,801	\$1,619,801	\$0
Calendar year 1995 reimbursements for end users and processors	<u>1,926,043</u>	<u>790,352</u>	<u>1,135,691</u>
Total	\$3,545,844	\$2,410,153	\$1,135,691

The 1996-97 appropriation of \$1,750,000 is based on April, 1995, DNR estimates of 1996-97 program demand. In August, 1996, DNR estimated that 1996-97 program demand will be approximately \$3,250,000, which is an increase of \$1,500,000. This is shown in Table 3.

TABLE 3**1996-97 Waste Tire Program Components**

<u>Component</u>	<u>Current Allocation (April, 1995 Estimate)</u>	<u>August, 1996 Estimated Demand</u>
Cleanup Activities	\$500,000	\$750,000
Reimbursement Grants	1,000,000	2,000,000
Recovery Grants	<u>250,000</u>	<u>500,000</u>
Total	\$1,750,000	\$3,250,000

The re-estimated 1996-97 demand includes approximately \$750,000 for cleanup activities to clean up older and smaller tire stockpiles, including approximately four limited-term employees in DNR district offices to administer waste tire cleanups. In addition, if DNR determines that ash buried at the site of the 1986 Sommerset tire fire has to be removed because of potential groundwater contamination, the 1996-97 demand for cleanup activities could increase by another \$500,000 to \$1,000,000. (Initial tests suggest that the ash may not have to be removed). Actual 1996-97 expenditures and encumbrances for cleanups were \$656,300 through November 30, 1996. Total expenditures for the year will depend on the costs of projects that are identified throughout the year. Some DNR officials have recently indicated that cleanup expenditures may reach \$1,200,000 during 1996-97 (excluding the Sommerset site), which is \$450,000 greater than estimated in August, 1996. However, the agency has not requested additional funding nor re-estimated overall 1996-97 program demand.

In April, 1995, DNR estimated that reimbursement grants for calendar year 1995 would be \$1,500,000 but the eligible grant amount was actually \$1,900,000. In April, 1995, DNR estimated that the reimbursement grants for calendar year 1996 would decrease to \$1,000,000 but currently estimates the 1996-97 demand to be \$2,000,000, similar to 1995-96 demand. This would include approximately \$1,500,000 for end users (compared with historical demand prior to calendar year 1995 of approximately \$1,000,000 annually) and \$500,000 for processors. DNR indicates that the pending termination of the reimbursement grant program on June 30, 1997, has encouraged many responsible parties to clean up sites on their own faster than anticipated, thereby increasing the number of waste tires eligible for reimbursement. The actual 1996-97 demand for reimbursement grants will not be known until grant requests are processed in the spring of 1997.

In April, 1995, DNR estimated that demand for management or recovery grants would be \$250,000 per year in 1995-96 and 1996-97, consistent with the administrative rule allocation. In March, 1996, DNR awarded \$558,000 in recovery grant awards, most of which will be for collection activities completed by March, 1997, and expended by May, 1997. DNR indicates that the increase was the result of many local governments planning to conduct "clean sweep" tire

collections before the program ends on June 30, 1997. DNR estimates that 1996-97 demand for recovery grants will be \$500,000, similar to 1995-96 demand. Actual demand will not be known until grant requests are received on March 1, 1997. The administrative rule would allow DNR to approve grants for collection activities that take place between March, 1997 and February, 1998, with DNR encumbering any awarded funds before the program ends on June 30, 1997.

While it is known that in 1995-96, \$1,135,700 of eligible calendar year 1995 reimbursement grants were not paid because of insufficient available funds at the time the grant awards were made, the need for funds for 1996-97 demand is less certain. Demand for 1996-97 funds will become clearer in the spring of 1997 after recovery and reimbursement grant requests are submitted and after cleanup expenses are more certain.

Under the current funding level of \$1,750,000 for 1996-97, if funds are not sufficient to fund all demand, the administrative rule would require that cleanups be funded first. The second funding priority would be calendar year 1996 reimbursement grants, which would be prorated if necessary. Any remaining funds would be available for recovery grants.

Approval of the DNR request would fund the August, 1996, estimates of 1996-97 demand and provide retroactive funding of \$1,135,700 for the remaining, eligible calendar year 1995 reimbursement grants. However, given more recent cleanup cost estimates, full funding of 1995 reimbursement grants would appear less likely. Approval of the September, 1996, DOA recommendation would provide \$207,700 less than the DNR request. Under DNR administrative rules, any additional funds provided by the Committee would first be used for 1996-97 program demand, and if any funds remain, DNR could be directed to retroactively provide additional funds for calendar year 1995 reimbursement grants.

Waste Tire Program Balance

Under current law, the estimated waste tire program balance on June 30, 1997, is \$3,967,200. The DOA recommendation of \$2,428,000 would reduce the June 30, 1997, program balance to \$1,539,200. Table 4 shows the estimated waste tire program balance under the DOA recommendation. The DNR request of \$2,635,700 would reduce the June 30, 1997, program balance to \$1,331,500.

TABLE 4**Waste Tire Program Balance**

	1995-96 <u>Actual</u>	1996-97 <u>Estimated</u>
Opening Balance	\$4,935,400	\$3,449,200
Waste Tire Fee Revenues	<u>3,369,300*</u>	<u>3,400,000</u>
Total Revenues Available	\$8,304,700	\$6,849,200
Expenditures		
Program Activities	3,209,500	1,750,000
Administration	396,000	405,000
Transfer to Environmental Fund	1,250,000	0
Carryover Encumbrances	0	727,000
October, 1996 s. 16.515 Request	<u>0</u>	<u>2,428,000</u>
Total Expenditures	\$4,855,500	\$5,310,000
Closing Balance	\$3,449,200	\$1,539,200

*This includes \$3,195,400 in tire fees and \$173,900 in cost recoveries from responsible parties for DNR-funded tire cleanups.

Under current law, the projected June 30, 1997, waste tire balance would result in a lapse to the general fund of almost \$4.0 million, which is almost \$700,000 more than the \$3.3 million previously estimated. The change is due to higher than expected revenues. Under the DOA recommendation, the June 30, 1997, lapse would be \$1.5 million. Under the DNR request the June 30, 1997, lapse would be \$1.3 million.

The scheduled termination date of the program has increased demand for reimbursement and recovery grants, as grant recipients accomplish grant-eligible activities while state funding is available. While revenues have exceeded estimates, demand for reimbursement and recovery grants has also increased in 1995-96, and is currently anticipated to remain at those levels in 1996-97. In addition, the 1995 administrative rule changes increased demand for reimbursement grants by approximately \$500,000 annually for waste tire processors.

Grant recipients argue they expected full funding of grants through 1996-97. Further, agency and administration officials argue that approval of the request would be consistent with the budgetary intent to fund the estimated cost of all eligible activities. However, it could also be argued that conversion of the appropriation from continuing to annual resulted in limiting expenditures to the available expenditure authority and reserving the program balance to lapse to the general fund when the program terminates. Typically, under an annual appropriation, and

consistent with DNR rules for this program, if funding is insufficient to pay all eligible costs, proration occurs.

Approval of the DNR request for \$2,635,700 would provide a total of \$4,385,700 in 1996-97 to: (a) fund 1996-97 program demand and all or a portion of the remaining calendar year 1995 (1995-96) reimbursement grants; and (b) result in a reduction of estimated general fund revenues on June 30, 1997, of almost \$2.0 million (\$1.3 million rather than \$3.3 million). Approval of DOA's recommendation would result in a reduction of estimated general fund revenues on June 30, 1997, of almost \$1.8 million (\$1.5 million rather than \$3.3 million).

Approval of \$1,500,000 would provide a total of \$3,250,000 in 1996-97 to: (a) fund DNR estimates of 1996-97 demand; (b) retain the 41% proration of calendar year 1995 reimbursement grants; and (c) result in a reduction of estimated general fund revenues on June 30, 1997, of almost \$0.8 million (\$2.5 million rather than \$3.3 million). (If 1996-97 demand exceeds estimates, recovery grants would be prorated first.)

Approval of \$700,000 would provide a total of \$2,450,000 in 1996-97 to: (a) fund estimated 1996-97 cleanup costs; (b) fund a portion of the re-estimated 1996-97 demand for reimbursement grants; (c) fund no 1996-97 recovery grants; (d) retain the 41% proration of calendar year 1995 reimbursement grants; and (e) result in no change in estimated general fund revenues on June 30, 1997 (because the current law re-estimate of an increase of \$0.7 million in the waste tire program balance would be utilized for the waste tire program).

Denial of the DNR request would: (a) require DNR prioritization of 1996-97 expenditures first to cleanups, then reimbursement grants and finally recovery grants, with probable proration of calendar year 1996 reimbursement grants and elimination of 1996-97 recovery grants; (b) retain the 41% proration of calendar year 1995 reimbursement grants; and (c) result in an increase of estimated general fund revenues on June 30, 1997, of approximately \$0.7 million because of a re-estimate of the waste tire program balance of \$4.0 million rather than \$3.3 million.

ALTERNATIVES

1. Approve DNR's request to provide \$2,635,700 PR in 1996-97 for waste tire removal and reimbursement program activities. Further, direct DNR to apply any excess 1996-97 funding toward the remainder of eligible 1995 reimbursement grants. Decrease the estimated June 30, 1997, general fund balance by \$1,800,000.

2. Approve DOA's September, 1996, recommendation to provide \$2,428,000 PR in 1996-97 for waste tire removal and reimbursement program activities. Further, direct DNR to apply any excess 1996-97 funding toward the remainder of eligible 1995 reimbursement grants. Decrease the estimated June 30, 1997, general fund balance by \$1,500,000.

3. Modify DNR's request to provide \$1,500,000 PR in 1996-97 to fund all or a portion of 1996-97 demand for waste tire removal and reimbursement program activities. Decrease the estimated June 30, 1997, general fund balance by \$800,000.

4. Modify DNR's request to provide \$700,000 PR in 1996-97 to fund a portion of 1996-97 demand for waste tire removal and reimbursement program activities. Based on a re-estimate of the June 30, 1997, waste tire program balance, this would result in no change to the estimated June 30, 1997, general fund balance.

5. Deny the request. Re-estimate the June 30, 1997, waste tire program lapse to the general fund at \$4 million, an increase of \$700,000.

Prepared by: Kendra Bonderud
Attachment

MO# 2282

BURKE	(Y)	N	A
ANDREA	Y	N	(A)
GEORGE	Y	N	(A)
1 DECKER	(Y)	N	A
JAUCH	(Y)	N	A
WINEKE	Y	(N)	A
WEEDEN	Y	(N)	A
COWLES	Y	(N)	A
BRANCEL	Y	(N)	A
2 FOTI	(Y)	N	A
SCHNEIDERS	Y	(N)	A
OURADA	(Y)	N	A
HARSDORF	Y	(N)	A
PORTER	Y	(N)	A
LINTON	Y	N	(A)
COGGS	(Y)	N	A

AYE 6 NO 7 ABS 3

MO# Alt. 4

BURKE	Y	(N)	A
ANDREA	Y	N	(A)
GEORGE	Y	N	(A)
DECKER	Y	(N)	A
JAUCH	Y	(N)	A
1 WINEKE	(Y)	N	A
2 WEEDEN	(Y)	N	A
COWLES	(Y)	N	A
BRANCEL	Y	(N)	A
FOTI	Y	(N)	A
SCHNEIDERS	Y	(N)	A
OURADA	Y	(N)	A
HARSDORF	Y	(N)	A
PORTER	(Y)	N	A
LINTON	Y	N	(A)
COGGS	Y	(N)	A

AYE 4 NO 9 ABS 3

MO# Alt. 2

2 BURKE	(Y)	N	A
ANDREA	Y	N	(A)
GEORGE	Y	N	(A)
DECKER	(Y)	N	A
JAUCH	(Y)	N	A
WINEKE	Y	(N)	A
WEEDEN	Y	(N)	A
COWLES	Y	(N)	A
BRANCEL	(Y)	N	A
FOTI	(Y)	N	A
SCHNEIDERS	(Y)	N	A
1 OURADA	(Y)	N	A
HARSDORF	(Y)	N	A
PORTER	Y	(N)	A
LINTON	Y	N	(A)
COGGS	(Y)	N	A

AYE 9 NO 4 ABS 3

ATTACHMENT

Calendar Year 1995 Waste Tire Reimbursement Grants

<u>Grantee</u>	<u>Address</u>	<u>Total Eligible Grant Amount</u>	<u>Prorated Grant Award June, 1996</u>	<u>Remaining Eligible Grant Amount</u>
An-Gun, Inc.	West Bend, WI	\$36,050	\$14,793	\$21,257
Auburndale Recycling, Inc.	Auburndale, WI	292,128	119,875	172,253
Archer Daniels Midland Co.	Decatur, IL	94,916	38,949	55,967
Babbitt Industries, Inc.	Minneapolis, MN	68,323	28,036	40,287
Bee Line Auto	Edgar, WI	40,920	16,791	24,128
BFI Tire Recyclers of MN	Savage, MN	198,393	81,410	116,982
TR Cochart Tire Recycling	Belgium, WI	38,221	15,684	22,537
Fort Howard Corp.	Green Bay, WI	92,536	37,972	54,564
L&L Sales and Service, Inc.	Appleton, WI	1,813	744	1,069
Lakin General	Chicago, IL	36,952	15,163	21,789
Manitowoc Public Utilities	Manitowoc, WI	5,116	2,099	3,017
Mat-Man, Inc.	Prairie Du Chien, WI	116	47	68
Mensch Manufacturing Inc.	Hastings, MI	175	72	103
Monitor Tire Disposal	St. Martin, MN	2,445	1,003	1,442
Northern States Power Co.	Eau Claire, WI	57,154	23,453	33,701
Otter Tail Power Co.	Big Stone City, SD	223,623	91,764	131,859
Packaging Corp. of America	Tomahawk, WI	324,950	133,343	191,607
Recycled Tire	Kaukauna, WI	9,394	3,855	5,539
Thilmany Division Intl. Paper	Kaukauna, WI	6,222	2,553	3,669
Waste Management, Inc.	Milwaukee, WI	106,412	43,666	62,746
State of WI/DOA	Madison, WI	8,585	3,523	5,062
WP & L Co.	Madison, WI	95,455	39,170	56,285
WP & L Co. Rock River	Beloit, WI	106,282	43,613	62,669
WP & L Co. Nelson Dewey	Cassville, WI	34,607	14,201	20,406
WP & L Edgewater	Sheboygan, WI	<u>45,255</u>	<u>18,570</u>	<u>26,685</u>
TOTAL		\$1,926,043	\$790,352	\$1,135,691

NATURAL RESOURCES

Waste Tire Program Expenditure Authority

Motion:

Move to provide additional funding of \$3,113,900 PR in 1996-97 for waste tire removal and reimbursement program activities. Further, direct that the estimated June 30, 1997, general fund balance be decreased by \$2,450,000.

Note:

The motion would increase the amount requested by DNR by \$478,200 from \$2,635,700 to \$3,113,900. This would provide full funding for the most recent estimates of demand for waste tire removal and reimbursement program activities in 1996-97 and fund the remainder of eligible 1995 reimbursement grants if 1996-97 demand does not increase beyond those estimates. The motion would provide a total of \$4,863,900 in 1996-97 to fund the following estimates of program activity, which would be paid in the listed priority order: (a) \$1,228,200 for cleanups; (b) \$2,000,000 for calendar year 1996 reimbursement grants; (c) \$500,000 for recovery grants; and (d) \$1,135,700 for the remainder of eligible calendar year 1995 reimbursement grants. If the combined costs under items (a) through (c) exceed \$3,728,200, then 1995 retroactive reimbursement grants would not be fully funded.

The motion would result in a June 30, 1997, estimated waste tire program balance of \$850,000, which would lapse to the general fund when the program ends on that date. This would decrease the general fund balance by \$2,450,000 from the January, 1996, estimate of \$3.3 million. (Under current law, the re-estimated waste tire program balance and lapse would be \$4.0 million).



Legislative Fiscal Bureau

One East Main, Suite 301 • Madison, WI 53703 • (608) 266-3847 • Fax: (608) 267-6873

December 16, 1996

TO: Members
Joint Committee on Finance

FROM: Bob Lang, Director

SUBJECT: Natural Resources--Request for Waste Tire Program Expenditure Authority--Agenda Item IV

DESCRIPTION OF THE REQUEST

On August 5, 1996, the Department of Natural Resources (DNR) submitted a s. 16.515 request to the Department of Administration (DOA) for increased expenditure authority of \$2,635,700 PR in 1996-97 for the waste tire removal and reimbursement program activities appropriation. DNR requested \$1,135,700 to fully fund waste tire reimbursement grants for calendar year 1995 and \$1,500,000 to fund re-estimated 1996-97 program demand.

On September 27, 1996, DOA recommended that the Joint Committee on Finance approve \$2,428,000 PR in 1996-97 for the program. DOA decreased the requested amount after recalculating the 1995-96 program demand. Of the DOA request, \$928,000 would fund the amount by which DOA estimated 1995-96 program demand exceeded the appropriation and the other \$1,500,000 would fund re-estimated 1996-97 program demand.

On October 17, 1996, the Committee notified DOA and DNR that an objection had been raised and that a meeting would be scheduled to consider the request.

BACKGROUND

The waste tire removal and recycling program was designed to: (a) clean up stockpiles of waste tires that are a threat to public health; (b) promote markets for environmentally sound disposal or recovery of waste tires; and (c) address the on-going problem of illegal tire dumping. The program is funded from a \$2 per tire recovery fee that is assessed on the owner of a motor

vehicle being registered for the first time in Wisconsin (typically \$10 per vehicle including the spare tire). The fee generates approximately \$3.4 million annually. The program is administered with 5.5 positions. The fee and associated tire program will terminate on June 30, 1997.

The program has three components: (a) cleanup activities; (b) reimbursement grants; and (c) management or recovery grants. These include:

Cleanup Activities. Since the program's establishment in 1987-88, most of the funds have been used to cleanup approximately two million stockpiled tires annually. DNR funds priority cleanup activities on a continuous basis.

Reimbursement grants. Reimbursement grants, based on the amount by weight of tires reused by businesses (generally one cent per pound, or \$20 per ton), are provided to end users of waste tires used for energy recovery, road base, recycling to make new products or certain other uses. Administrative rule changes made in 1995 expanded eligibility to include waste tire processors, such as shredders, and eligibility was provided retroactively to include waste tires processed after January 1, 1992. The 1995 rule changes end reimbursement grants for end users and processors on January 1, 1997. Reimbursement grants are awarded every spring for tires used or processed during the previous calendar year.

Management or recovery grants. Management or recovery grants are provided for: (a) local government programs that reduce illegal dumping such as collection, education and enforcement; and (b) projects that expand the markets for waste tires such as research and development to create or improve technology to reuse waste tires. Management or recovery grant applications are due March 1 and grant activities must be completed within one year.

Effective June 30, 1997, 1995 Act 27: (a) terminates the waste tire recovery fee; (b) eliminates the waste tire program and 5.5 associated positions; and (c) lapses any remaining program balance to the general fund. The lapse was most recently estimated (in January, 1996) to generate \$3.3 million in revenue to the general fund. Act 27 also: (a) converted the program from a continuing to an annual appropriation; (b) re-estimated the waste tire appropriation in accordance with DNR estimates to be \$3,750,000 in 1995-96 and \$1,750,000 in 1996-97; and (c) transferred \$1,250,000 from the waste tire account balance to the segregated environmental fund.

After the program ends on June 30, 1997, high priority cleanups that are not completed by responsible parties could be eligible for funding from the segregated environmental fund. No funding will be available for reimbursement or recovery grants.

DNR's October 4, 1996, 1997-99 biennial budget request to the Governor (approved by the Natural Resources Board on September 25, 1996) included continued funding for waste tire reimbursement grants of \$1,500,000 in 1997-98 and \$1,000,000 in 1998-99, with funding from the environmental fund instead of program revenue from the current waste tire fee. On November 8, 1996, the Natural Resources Board voted to delete the tire reimbursement grant funding request and to reduce DNR's proposal for creation of an environmental fee on the sale

of new vehicles from \$10 to \$5 per vehicle. Subsequently, DNR submitted a 1997-99 biennial budget revenue proposal to the Governor that included the \$5 per tire environmental fee to be deposited in the environmental fund, but did not retract the request for continued waste tire reimbursement grants.

ANALYSIS

Program Demand

Prior to enactment of Act 27, the waste tire program activities appropriation was continuing and program expenditures met all eligible demand for the three program components. The Act 27 conversion of the appropriation from continuing to annual was intended to limit expenditures to estimated program demand.

In April, 1995, DNR estimated that 1995-96 demand would be \$3,750,000, including: (a) \$500,000 for cleanup activities; (b) \$3,000,000 for reimbursement grants (approximately \$1,500,000 for grants to end users and processors for tires used in calendar year 1995 and \$1,500,000 for retroactive reimbursements to waste tire processors for calendar years 1992 through 1994); and (c) \$250,000 for management or recovery grants. In 1995-96, DNR expended \$3,209,500 for the three program components and encumbered an additional \$727,000 that was carried forward into 1996-97 for possible expenditure. Table 1 shows the 1995-96 expenditures and encumbrances by program component. Almost 90% of the carry-forward encumbrances were for recovery grants made in March, 1996, to local governments for tire collection activities that may take place by March, 1997.

TABLE 1

1995-96 Waste Tire Expenditures by Program Component

<u>Component</u>	<u>Expenditures*</u>	<u>Encumbrances</u>	<u>Total</u>
Cleanup Activities	\$531,923	\$86,316	\$618,240
Reimbursement Grants	2,539,002	0	2,539,002
Recovery Grants	<u>138,522</u>	<u>640,676</u>	<u>779,197</u>
Total	\$3,209,447	\$726,992	\$3,936,439

*Includes expenditure of prior year encumbrances.

Administrative rules (NR 555) establish an expenditure plan that allocates \$2,100,000 annually for cleanups, \$750,000 annually for reimbursement grants and \$250,000 for management or recovery grants. The rules establish a prioritization plan if annual revenues are less than

\$3,100,000, requiring DNR to allocate funds first to cleanups, then to reimbursement grants, then to management or recovery grants. The rules specify that a prorated payment shall be deemed full payment of the reimbursement grant. In 1995-96, after the appropriation was converted to annual, the rule's expenditure plan and allocation plan were not changed to conform with the reestimated program demand and annual appropriation amount.

In 1995-96, DNR allocated funds to cleanups on a continuous basis and paid \$1.6 million in retroactive reimbursement grants for processors in the fall of 1995. Then, despite the administrative rule requirements for prioritization of funding, DNR encumbered all recovery grants in March, 1996, before calculating the demand for calendar year 1995 reimbursement grants. Finally, in June, 1996, DNR awarded calendar year 1995 reimbursement grants for end users and processors at 41% of the eligible amount. While the program would have had sufficient funds under the prior continuing appropriation to fund 1995 reimbursement grants at 100% of the eligible amount, proration of the grants was necessitated by conversion of the appropriation to annual, higher than estimated demand and awarding of recovery grants before awarding of reimbursement grants. Table 2 shows 1995-96 reimbursement grant amounts. (Actual expenditures in Table 1 include expenditures of prior year encumbrances and so are larger than Table 2 award amounts). The attachment shows who received prorated reimbursement grants in 1995-96. DNR requests \$1,135,700 to pay the remaining eligible calendar year 1995 reimbursement grant amounts.

TABLE 2

1995-96 Waste Tire Reimbursement Grants

	<u>Eligible Grant Amount</u>	<u>Award</u>	<u>Remaining Eligible Amount</u>
Retroactive reimbursements for processors for calendar years 1992 through 1994	\$1,619,801	\$1,619,801	\$0
Calendar year 1995 reimbursements for end users and processors	<u>1,926,043</u>	<u>790,352</u>	<u>1,135,691</u>
Total	\$3,545,844	\$2,410,153	\$1,135,691

The 1996-97 appropriation of \$1,750,000 is based on April, 1995, DNR estimates of 1996-97 program demand. In August, 1996, DNR estimated that 1996-97 program demand will be approximately \$3,250,000, which is an increase of \$1,500,000. This is shown in Table 3.

TABLE 3**1996-97 Waste Tire Program Components**

<u>Component</u>	<u>Current Allocation (April, 1995 Estimate)</u>	<u>August, 1996 Estimated Demand</u>
Cleanup Activities	\$500,000	\$750,000
Reimbursement Grants	1,000,000	2,000,000
Recovery Grants	<u>250,000</u>	<u>500,000</u>
Total	\$1,750,000	\$3,250,000

The re-estimated 1996-97 demand includes approximately \$750,000 for cleanup activities to clean up older and smaller tire stockpiles, including approximately four limited-term employees in DNR district offices to administer waste tire cleanups. In addition, if DNR determines that ash buried at the site of the 1986 Sommerset tire fire has to be removed because of potential groundwater contamination, the 1996-97 demand for cleanup activities could increase by another \$500,000 to \$1,000,000. (Initial tests suggest that the ash may not have to be removed). Actual 1996-97 expenditures and encumbrances for cleanups were \$656,300 through November 30, 1996. Total expenditures for the year will depend on the costs of projects that are identified throughout the year. Some DNR officials have recently indicated that cleanup expenditures may reach \$1,200,000 during 1996-97 (excluding the Sommerset site), which is \$450,000 greater than estimated in August, 1996. However, the agency has not requested additional funding nor re-estimated overall 1996-97 program demand.

In April, 1995, DNR estimated that reimbursement grants for calendar year 1995 would be \$1,500,000 but the eligible grant amount was actually \$1,900,000. In April, 1995, DNR estimated that the reimbursement grants for calendar year 1996 would decrease to \$1,000,000 but currently estimates the 1996-97 demand to be \$2,000,000, similar to 1995-96 demand. This would include approximately \$1,500,000 for end users (compared with historical demand prior to calendar year 1995 of approximately \$1,000,000 annually) and \$500,000 for processors. DNR indicates that the pending termination of the reimbursement grant program on June 30, 1997, has encouraged many responsible parties to clean up sites on their own faster than anticipated, thereby increasing the number of waste tires eligible for reimbursement. The actual 1996-97 demand for reimbursement grants will not be known until grant requests are processed in the spring of 1997.

In April, 1995, DNR estimated that demand for management or recovery grants would be \$250,000 per year in 1995-96 and 1996-97, consistent with the administrative rule allocation. In March, 1996, DNR awarded \$558,000 in recovery grant awards, most of which will be for collection activities completed by March, 1997, and expended by May, 1997. DNR indicates that the increase was the result of many local governments planning to conduct "clean sweep" tire

collections before the program ends on June 30, 1997. DNR estimates that 1996-97 demand for recovery grants will be \$500,000, similar to 1995-96 demand. Actual demand will not be known until grant requests are received on March 1, 1997. The administrative rule would allow DNR to approve grants for collection activities that take place between March, 1997 and February, 1998, with DNR encumbering any awarded funds before the program ends on June 30, 1997.

While it is known that in 1995-96, \$1,135,700 of eligible calendar year 1995 reimbursement grants were not paid because of insufficient available funds at the time the grant awards were made, the need for funds for 1996-97 demand is less certain. Demand for 1996-97 funds will become clearer in the spring of 1997 after recovery and reimbursement grant requests are submitted and after cleanup expenses are more certain.

Under the current funding level of \$1,750,000 for 1996-97, if funds are not sufficient to fund all demand, the administrative rule would require that cleanups be funded first. The second funding priority would be calendar year 1996 reimbursement grants, which would be prorated if necessary. Any remaining funds would be available for recovery grants.

Approval of the DNR request would fund the August, 1996, estimates of 1996-97 demand and provide retroactive funding of \$1,135,700 for the remaining, eligible calendar year 1995 reimbursement grants. However, given more recent cleanup cost estimates, full funding of 1995 reimbursement grants would appear less likely. Approval of the September, 1996, DOA recommendation would provide \$207,700 less than the DNR request. Under DNR administrative rules, any additional funds provided by the Committee would first be used for 1996-97 program demand, and if any funds remain, DNR could be directed to retroactively provide additional funds for calendar year 1995 reimbursement grants.

Waste Tire Program Balance

Under current law, the estimated waste tire program balance on June 30, 1997, is \$3,967,200. The DOA recommendation of \$2,428,000 would reduce the June 30, 1997, program balance to \$1,539,200. Table 4 shows the estimated waste tire program balance under the DOA recommendation. The DNR request of \$2,635,700 would reduce the June 30, 1997, program balance to \$1,331,500.

TABLE 4**Waste Tire Program Balance**

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Waste Tire Fee Revenues	<u>3,369,300*</u>	<u>3,400,000</u>
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Expenditures		
Program Activities	3,209,500	1,750,000
Administration	396,000	405,000
Transfer to Environmental Fund	1,250,000	0
Carryover Encumbrances	0	727,000
October, 1996 s. 16.515 Request	<u>0</u>	<u>2,428,000</u>
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*This includes \$3,195,400 in tire fees and \$173,900 in cost recoveries from responsible parties for DNR-funded tire cleanups.

Under current law, the projected June 30, 1997, waste tire balance would result in a lapse to the general fund of almost \$4.0 million, which is almost \$700,000 more than the \$3.3 million previously estimated. The change is due to higher than expected revenues. Under the DOA recommendation, the June 30, 1997, lapse would be \$1.5 million. Under the DNR request the June 30, 1997, lapse would be \$1.3 million.

The scheduled termination date of the program has increased demand for reimbursement and recovery grants, as grant recipients accomplish grant-eligible activities while state funding is available. While revenues have exceeded estimates, demand for reimbursement and recovery grants has also increased in 1995-96, and is currently anticipated to remain at those levels in 1996-97. In addition, the 1995 administrative rule changes increased demand for reimbursement grants by approximately \$500,000 annually for waste tire processors.

Grant recipients argue they expected full funding of grants through 1996-97. Further, agency and administration officials argue that approval of the request would be consistent with the budgetary intent to fund the estimated cost of all eligible activities. However, it could also be argued that conversion of the appropriation from continuing to annual resulted in limiting expenditures to the available expenditure authority and reserving the program balance to lapse to the general fund when the program terminates. Typically, under an annual appropriation, and

consistent with DNR rules for this program, if funding is insufficient to pay all eligible costs, proration occurs.

Approval of the DNR request for \$2,635,700 would provide a total of \$4,385,700 in 1996-97 to: (a) fund 1996-97 program demand and all or a portion of the remaining calendar year 1995 (1995-96) reimbursement grants; and (b) result in a reduction of estimated general fund revenues on June 30, 1997, of almost \$2.0 million (\$1.3 million rather than \$3.3 million). Approval of DOA's recommendation would result in a reduction of estimated general fund revenues on June 30, 1997, of almost \$1.8 million (\$1.5 million rather than \$3.3 million).

Approval of \$1,500,000 would provide a total of \$3,250,000 in 1996-97 to: (a) fund DNR estimates of 1996-97 demand; (b) retain the 41% proration of calendar year 1995 reimbursement grants; and (c) result in a reduction of estimated general fund revenues on June 30, 1997, of almost \$0.8 million (\$2.5 million rather than \$3.3 million). (If 1996-97 demand exceeds estimates, recovery grants would be prorated first.)

Approval of \$700,000 would provide a total of \$2,450,000 in 1996-97 to: (a) fund estimated 1996-97 cleanup costs; (b) fund a portion of the re-estimated 1996-97 demand for reimbursement grants; (c) fund no 1996-97 recovery grants; (d) retain the 41% proration of calendar year 1995 reimbursement grants; and (e) result in no change in estimated general fund revenues on June 30, 1997 (because the current law re-estimate of an increase of \$0.7 million in the waste tire program balance would be utilized for the waste tire program).

Denial of the DNR request would: (a) require DNR prioritization of 1996-97 expenditures first to cleanups, then reimbursement grants and finally recovery grants, with probable proration of calendar year 1996 reimbursement grants and elimination of 1996-97 recovery grants; (b) retain the 41% proration of calendar year 1995 reimbursement grants; and (c) result in an increase of estimated general fund revenues on June 30, 1997, of approximately \$0.7 million because of a re-estimate of the waste tire program balance of \$4.0 million rather than \$3.3 million.

ALTERNATIVES

1. Approve DNR's request to provide \$2,635,700 PR in 1996-97 for waste tire removal and reimbursement program activities. Further, direct DNR to apply any excess 1996-97 funding toward the remainder of eligible 1995 reimbursement grants. Decrease the estimated June 30, 1997, general fund balance by \$1,800,000.

2,000,000

2. Approve DOA's September, 1996, recommendation to provide \$2,428,000 PR in 1996-97 for waste tire removal and reimbursement program activities. Further, direct DNR to apply any excess 1996-97 funding toward the remainder of eligible 1995 reimbursement grants. Decrease the estimated June 30, 1997, general fund balance by \$1,500,000:

\$ 1,800,000

3. Modify DNR's request to provide \$1,500,000 PR in 1996-97 to fund all or a portion of 1996-97 demand for waste tire removal and reimbursement program activities. Decrease the estimated June 30, 1997, general fund balance by \$800,000.

4. Modify DNR's request to provide \$700,000 PR in 1996-97 to fund a portion of 1996-97 demand for waste tire removal and reimbursement program activities. Based on a re-estimate of the June 30, 1997, waste tire program balance, this would result in no change to the estimated June 30, 1997, general fund balance.

5. Deny the request. Re-estimate the June 30, 1997, waste tire program lapse to the general fund at \$4 million, an increase of \$700,000.

Prepared by: Kendra Bonderud
Attachment

Staff Recommendation:
2
(Shibiltz probably wants
1, but # 2 seems
to be the better
fiscal choice)

ATTACHMENT

Calendar Year 1995 Waste Tire Reimbursement Grants

<u>Grantee</u>	<u>Address</u>	<u>Total Eligible Grant Amount</u>	<u>Prorated Grant Award June, 1996</u>	<u>Remaining Eligible Grant Amount</u>
An-Gun, Inc.	West Bend, WI	\$36,050	\$14,793	\$21,257
Auburndale Recycling, Inc.	Auburndale, WI	292,128	119,875	172,253
Archer Daniels Midland Co.	Decatur, IL	94,916	38,949	55,967
Babbitt Industries, Inc.	Minneapolis, MN	68,323	28,036	40,287
Bee Line Auto	Edgar, WI	40,920	16,791	24,128
BFI Tire Recyclers of MN	Savage, MN	198,393	81,410	116,982
TR Cochart Tire Recycling	Belgium, WI	38,221	15,684	22,537
Fort Howard Corp.	Green Bay, WI	92,536	37,972	54,564
L&L Sales and Service, Inc.	Appleton, WI	1,813	744	1,069
Lakin General	Chicago, IL	36,952	15,163	21,789
Manitowoc Public Utilities	Manitowoc, WI	5,116	2,099	3,017
Mat-Man, Inc.	Prairie Du Chien, WI	116	47	68
Mensch Manufacturing Inc.	Hastings, MI	175	72	103
Monitor Tire Disposal	St. Martin, MN	2,445	1,003	1,442
Northern States Power Co.	Eau Claire, WI	57,154	23,453	33,701
Otter Tail Power Co.	Big Stone City, SD	223,623	91,764	131,859
Packaging Corp. of America	Tomahawk, WI	324,950	133,343	191,607
Recycled Tire	Kaukauna, WI	9,394	3,855	5,539
Thilmany Division Intl. Paper	Kaukauna, WI	6,222	2,553	3,669
Waste Management, Inc.	Milwaukee, WI	106,412	43,666	62,746
State of WI/DOA	Madison, WI	8,585	3,523	5,062
WP & L Co.	Madison, WI	95,455	39,170	56,285
WP & L Co. Rock River	Beloit, WI	106,282	43,613	62,669
WP & L Co. Nelson Dewey	Cassville, WI	34,607	14,201	20,406
WP & L Edgewater	Sheboygan, WI	45,255	18,570	26,685
TOTAL		\$1,926,043	\$790,352	\$1,135,691